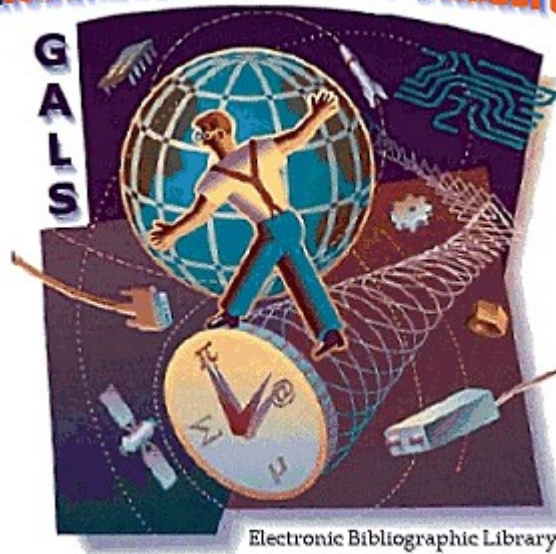


# Globalization and Labor Standards



## GALS Newsletter

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### **Short Takes**

**Brief updates on labor law developments  
In different parts of the world**

#### **European Court of Justice Finds Spain's Breastfeeding Leave Statute Discriminatory**

Under Spanish law, new mothers are allowed to take up to an hour out of their workday in order to feed a baby under nine months of age. The statute was originally introduced in 1900 in order

to promote breastfeeding and has been amended to include bottle feeding. According to the statute, new fathers can also enjoy this right, provided that the mother is also employed. (Section 37.4 Workers' Statute).

This last portion of the Statute became the source of a recent case before the European Court of Justice (ECJ). In *Alvarez v. Sesa Start Espana*, Mr. Alvarez sought to take breastfeeding leave, but his employer rejected the request because his wife was self-employed. Alvarez contended that this constituted unfair sex discrimination because a mother could take breastfeeding leave regardless of whether the father was employed, but a father could only take this time off if the mother was "employed" under the terms of the Statute.

On September 30, 2010, the ECJ handed down a decision in *Alvarez*. The ECJ ruled that the equal protection measures of its Directive 76/2007, particularly Articles 2 to 5, precludes the Spanish Statute. The ECJ based its reasoning chiefly on three observations:

- First, the act of feeding a newborn today is detached from biological factors and must be considered primarily as time devoted to a child. Bottlefeeding and taking care of a newborn are tasks that both mothers and fathers can take assume. Breastfeeding leave laws, especially those that already include men, are thus aimed at reconciling family time and work life for the parent seeking leave, regardless of their gender.
- Second, the Spanish Statute is focused primarily on the child, whose interest in nutrition and bonding time can be met by allowing equal treatment of mothers and fathers.
- Third, the Statute does not reduce inequalities in order to prevent disadvantages in the workplace for women, who have historically suffered disproportionate consequences as a result of diverting attention from their career to their family. Thus, that cannot be purported to be the reason for the gendered distinction written into the law.
- Fourth, because the law was amended to include bottlefeeding, differential treatment based on sex can no longer be justified by protecting mothers or reducing inequalities in workplace or home duties.

In essence, whereas Spanish law previously viewed men's baby feeding rights only with respect to the mother's ability to perform those tasks, the ECJ is giving Spanish men a new independent right to take time out of their workday to feed their newborns.

The ECJ's decision may have implications in other countries within the European Union (EU). For example, in the United Kingdom, a new set of paternity leave regulations will take effect next April. Similar to maternity leave laws, this law only entitles a father taking paternity leave a flat rate of pay (currently £124.88 a week or 90% of normal weekly earnings if lower). However, some employers offer more than the amount required by law to mothers. Thus, after *Alvarez*, fathers are likely to claim that they are entitled to receive the same enhanced pay, or the employer will be violating ECJ equal protection laws.

Until now, in the U.K., few men took advantage of parental leave laws, particularly for financial reasons. If there is suddenly a surge in demand for good-paying paternity leave, many employers may simply reduce both their maternity and paternity leave provisions to the minimum required by law.

Still, by giving men an equal right to breastfeeding leave regardless of the mother's work

arrangement, the ECJ has championed equal protection in two key ways: Spanish law will be consistent with the ECJ's Equal Treatment Directive, and perhaps more importantly, the traditional delegation of childrearing responsibilities, particular in regard to baby feeding, will be diminished and men will be free to assume more of this responsibility.

For additional information, see:

Court of Justice of the European Union's Press Release and Statement of Judgment:

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2010-09/cp100094en.pdf>

European Court of Justice Directive Finds Spain's Breastfeeding Leave Statute Inconsistent With Equal Protection Directive

<http://www.globalemploymentlaw.com/2010/11/regions/europe/spain/european-court-of-justice-finds-spains-breastfeeding-leave-statute-inconsistent-with-equal-treatment/>

ECJ Rules Spanish "Breastfeeding" Law Unjustified

<http://www.lexology.com/library/detail.aspx?g=9bf52bcc-afe8-4cfc-a005-29f4c3543164>

## Flexibilization

**Durkalski, John A., "Fixing Economic Flexibilization: A Role for Flexible Work Laws in the Workplace Policy Agenda", *Berkeley Journal of Employment and Labor Law* v. 30 no381 (2009)**

### **Abstract:**

This article contrasts the United Kingdom and United States' statutes that seek to mitigate the challenge of juggling family care-giving with inflexible work hours. The United Kingdom's Act gives a parent the right to request different work hours to care for any young or disabled child and provides a cause of action if an employer offers an insufficient reason for denying the change in hours. In contrast, the United States' Family and Medical Leave Act (FMLA) merely permits a worker to take unpaid leave to care for sick family members. In addition, the United States permits federal agencies to allow employees to change their hours, but does not compel the agency to adopt flexible schedules upon request. The article concludes that the United Kingdom's Employment Act of 2002 offers workers more flexibility than the United States' current regime. In addition to suggesting that the United States pass legislation like that in the United Kingdom, it proposes that the United States raise the age of a qualifying child to more than six years old; require that an employer's reason for denying a change in hours be objectively reasonable; and provide low-income workers with better access to the adjudicative bodies that review an employer's decision.

Subjects: [Anti-Discrimination](#), [Country-Specific Case Studies](#), [Flexibilization](#), [Workplace Discrimination](#)

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## Workplace Discrimination

**Lerouge, Loic, "Moral Harassment in the Workplace: French Law and European Perspectives", *Comparative Labor Law & Policy Journal* v. 32 (2010) p. 109**

**Abstract:**

In the last decade, some European nations and the European Union have passed legislation to combat “moral harassment,” that is, bullying by one employee that damages the physical or mental health of another employee. This article compares judicial interpretations of such legislation in France, Belgium, and the European Union. The author concludes that, in all these jurisdictions, legislation against moral harassment has expanded legally-cognizable claims of employer harassment to include damage to workers’ mental – not just physical – well-being. For example, France’s highest court has imposed a relatively low burden for workers to establish a prima facie case and interpreted the moral harassment statute’s vague penal provisions to impose criminal as well as civil sanctions on employers who act with intent to cause harm. In contrast, in Belgium, far fewer cases have been brought under its moral harassment statute and far fewer have resulted in victories for employees. Although France and Belgium’s courts interpret their own nation’s statutes by relying on European Parliament directives, the European Court of Justice has adopted a less protective stance than either of these nations and has questioned whether an employer has an obligation to operate a workplace free of moral harassment

Subjects: [Anti-Discrimination](#), [Country-Specific Case Studies](#), [European Union](#), [Workplace Discrimination](#), [Workplace Harassment](#)

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## Links to Related Projects

### **The International Labour Organization's (ILO) Informal Economy Resource Database:**

<http://www.ilo.org/dyn/infoecon/iebrowse.home>

The Informal Economy Resource Database contains a myriad of ILO activities, research or tools directly or indirectly related to the informal economy and decent work. This source is a "living" and dynamic inventory of information on labour issues relating to the informal economy, such as access to finance, data and statistics, employment, gender equality, policy, rights, social protection and working conditions. It is a valuable tool for anyone undertaking research or working on labour issues and the informal economy.

### **International Labour Organization's (ILO) Conditions of Work and Employment Laws**

<http://www.ilo.org/travdatabase>

The Program maintains a Database of Conditions of Work and Employment Laws, which provides information on laws from around the world. The database covers measures on minimum wages, working hours and holidays, and maternity protection and provides information on around 130 countries from all regions.

### **Asian Law Center: <http://www.law.unimelb.edu.au/alc/bibliography/browse.asp?s=45>**

The Asian Law Centre, an initiative of the University of Melbourne Law School, devoted to the development of understanding of Asian law, offers an extensive bibliography of Asian labor law articles and reports.

### **Centre for Employment and Labour Relations Law: <http://www.law.unimelb.edu.au/celr/>**

Centre for Employment and Labour Relations Law is a research and teaching center devoted to the development of an understanding of labor law at the University of Melbourne. The Center's website describes the activities of the Center and contains links to several databases that are of interest to labor law scholars and practitioners. For example, the Center's Work Relations Law Project contains extensive information about Australian labor law that can be accessed directly at <http://www.austlii.edu.au/au/special/industrial/>.

### **ETUI Labourline: <http://www.labourline.org/Etui>**

ETUI Labourline is a database of European labor information resources covering European, international and comparative aspects of industrial relations and health and safety issues, developed by the Documentation Centres of the European Trade Union Institute and the European Trade Union Institute for Health and Safety (Brussels). The consolidated bibliographic database contains more than 20,000 references to documents focusing on industrial relations, and more than 15,000 references to documents on health and safety issues.

### **Globalization Bulletin: <http://www.rci.rutgers.edu/~dbensman/bulletin.html>**

The Globalization Bulletin is a weekly e-newsletter providing linked access to the latest articles, research, and web resources on a range of global labor issues—ranging from union organizing and labor markets to immigrations and trade agreements. The Bulletin is produced by the Globalization Task Force of the New Jersey Division of the United Nations Association-USA and the Department of Labor Studies and Employment Relations School of Management and Labor Relations, Rutgers University. To subscribe, email David Bensman at [dbensman@smlr.rutgers.edu](mailto:dbensman@smlr.rutgers.edu).

**International Social Security and Workers Compensation Journal:**

<http://www.business.curtin.edu.au/business/research/journals/international-journal-of-social-security-and-workers-compensation>

The International Social Security and Workers Compensation Journal is an on-line journal that focuses on international scholarship in the areas of social security, workers compensation, and occupational health, and disability support. It is published by the School of Business Law, Curtin Institute of Technology in Perth Australia. The IJSSWC contains inter-disciplinary articles in fields such as law, occupational medicine, health economics, and disability studies.

**Labor and Global Change Database:** <http://www.ilir.umich.edu/lagn/>

The Labor and Global Change Database provides bibliographies, citation information and (where available) web links to the full text of research exploring connections between labor and globalization. The database aims to provide researchers with an easy means to make the results of their work widely available to other scholars and the interested public. The database is run by and continually updated by the Labor and Global Change Program of the University of Michigan.

**LabourWeb:** <http://www.lex.unict.it/eurolabor/en/>

The Labour Web is a comprehensive documentation center for information about European labor law, social law, industrial relations and the welfare state. It contains up-to-date versions of European Union law, directives, pending directives, EU news, press releases, economic statistics and decisions of the European Court of Justice. It also contains a Working Papers series and subject matter reports (dossiers) on issues concerning European integration. The site also provides links to other websites that contain working papers, statistical reports, and other information about social, economic and industrial relations affairs in the European context. It is run by the Massimo D'Antona Centre for the Study of European Labour Law, at the Faculty of Law of the University of Catania.

**The Marco Biagi Centre for International and Comparative Studies:**

<http://www.csmb.unimo.it>

The Marco Biagi Centre for International and Comparative Studies at the University of Modena and Reggio Emilia, Italy, functions as policy resource center on comparative labor issues. Besides publishing books and law journals, the Center provides a clearinghouse of international law journals, including the International Journal of Comparative Labour Law and Industrial Relations (<http://www.csmb.unimo.it/journal.html>). Currently only in Italian, the Center's

website will soon offer an English version.

**Trade Unions and Labor Relations Database:** <http://www.polwiss.fu-berlin.de/tu/english/>

The database, produced by the Institute of Labor Relations of the Otto-Suhr-Institute of the Freie University of Berlin, contains almost 7,000 citations of books, articles, working papers, brochures, proceedings etc. The bulk of the citations address aspects of labor relations in Germany, but there is a substantial body of literature in the database covering the EU and Eastern Europe.

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